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MAY 15 1958
JOHN T. FEY, Clerk

No. 895

In the Supreme Court of the United States

October Term, 1957

J. MEREDITH TATTON, PETITIONER

v.

GRANT CROLLEY, ERWIN ZABEL and CHARLES S. BROWN, in their Capacities as Members of the Statutory Review Committee, Department of Agriculture of the United States

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On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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BRIEF FOR THE RESPONDENTS IN OPPOSITION

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INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	2
Argument	3
Conclusion	7

CITATIONS

Cases:

C. G. Conn, Limited v. *National Labor Relations Board*, 108 F. 2d 390	6-7
Daffin v. *Pape*, 170 F. 2d 622	6
Federal Communications Comm'n v. *Broadcasting Co.*, 309 U.S. 134	6
Federal Power Commission v. *Idaho Power Co.*, 344 U. S. 17	6
Federal Radio Comm'n v. *Nelson Bros. Co.*, 289 U. S. 266	6
Federal Security Adm'r. v. *Quaker Oats Co.*, 318 U.S. 218	6
Federal Trade Commission v. *Carter Products*, 346 U. S. 327	6
Federal Trade Commission v. *Morton Salt Co.*, 344 U. S. 37	6
Ford Motor Co. v. *Labor Board*, 305 U. S. 364	6
Fulford v. *Forman*, 245 F.2d 145	6
Securities and Exchange Commission v. *Chenery Corporation*, 318 U.S. 80	5
Smith Land Company v. *Christensen*, 148 F. 2d 184	6

Statute:

Agricultural Adjustment Act of 1938, 7 U.S.C. 1363-1366	2, 4, 6

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OPINION BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit (Pet. 15-20) is reported in 249 F. 2d 908. The United States District Court for the Southern District of Texas did not file an opinion.

JURISDICTION

The judgment of the Court of Appeals was entered on December 10, 1957. A petition for rehearing was

denied on January 9, 1958 (Pet. 22), and the petition for certiorari was filed on April 4, 1958. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

A statutory review committee established under the Agricultural Adjustment Act of 1938 determined, originally, that petitioner was entitled to a cotton acreage allotment for the 1956 crop of cotton. However, after additional evidence was received at a properly reopened hearing, the review committee determined that petitioner was not entitled to an allotment. The procedure at the second hearing subsequent to the receipt of further evidence was defective. The issue is whether, in these circumstances, the Court of Appeals properly held that the case should be remanded to the review committee for further administrative proceedings.

STATUTE INVOLVED

The relevant provisions of the Agricultural Adjustment Act of 1938, as amended, are set forth in Appendix B to the petition (Pet. 23-24).

STATEMENT

This action was instituted before the Review Committee for Refugio County, Texas, to review the determination by the County Committee for Refugio County that petitioner was not entitled to a cotton acreage allotment for the 1956 crop year (R. 20-24). On the basis of the evidence adduced at the original

administrative hearing, the review committee determined that petitioner was entitled to a cotton acreage allotment (R. 17-19). The hearing was, however, admittedly properly reopened (Pet. 2), and additional evidence was received at the reopened hearing (Pet. 2-3). On the basis of the evidence adduced at the original hearing and the reopened hearing, the review committee issued an amended determination that petitioner was not entitled to a 1956 cotton acreage allotment (R. 20-24).

Because of procedural irregularities occurring after the receipt of all of the evidence at the reopened hearing, the District Court held that the amended determination was invalid, and directed the review committee to reinstate its original determination (R. 99-101). The Government appealed to the Court of Appeals solely on the ground that the District Court erred in directing the review committee to reinstate its original decision instead of remanding the cause for reconsideration and formulation of an independent determination by the review committee (R. 123). The Court of Appeals unanimously sustained the Government's contention, and ordered a remand to the review committee (Pet. 15-21).

ARGUMENT

The narrow issue presented by petitioner relates to the action to be taken in the event that a proceeding before a review committee established under the Agricultural Adjustment Act of 1938 is reopened, additional evidence is received, and procedural irregularities subsequent to the introduction of the

evidence at the reopened hearing invalidate the committee's determination on rehearing. It is plain, we submit, that the Court of Appeals properly held that in those circumstances the case must be remanded to the review committee to arrive at a proper administrative determination.[1]

The review committee is vested with the administrative authority to determine—on the basis of the evidence adduced at a hearing—petitioner's farm acreage allotment and farm marketing quota (7 U. S. C. 1363-1366); and on judicial review the "court shall be limited to questions of law, and the findings of fact by the review committee, if supported by evidence shall be conclusive" (7 U. S. C. 1366). The issues before the review committee as to petitioner's right to an allotment are fundamentally factual in character, *viz.*, whether petitioner is the "operator" of the farm and whether he is largely dependent on income from the farm for a livelihood (R. 20-24). The petitioner contends (Pet. 4, 6, 7, 8, 10, 12) that the relevant facts are undisputed, and reliance is placed, in this respect, on the finding by the District Court that the "facts of this case are undisputed and are as set out in the above narrative statement of the case" (R. 99). But the facts set out by the District Court in the narrative statement

[1] The contention (Pet. 12) that the Court of Appeals remanded the cause for "reasons not specified as error, nor briefed nor argued before it" is erroneous. The Court of Appeals remanded the case for the identical reason advanced in the Government's brief, *viz.*, that the District Court usurped the administrative function of the review committee (Pet. 20).

of the case relate to the facts with respect to the procedural error which occurred after the evidence was received at the reopened hearing—and not with respect to the substantive issues before the review committee.

Evidence on these issues was received by the review committee both at the original hearing and at the reopened hearing. The initial determination by the review committee was therefore based on only part of the administrative record, and until the review committee renders its decision based on all of the evidence the administrative process is not complete. The determination made by the review committee following the reopened hearing was admittedly invalid because of procedural irregularities which occurred after the reopened hearing was closed and the Court of Appeals therefore properly directed that the case be remanded to the review committee to complete the administrative process. It is familiar doctrine that, "where the correctness of the lower court's decision depends upon a determination of fact which only a jury could make but which has not been made, the appellate court cannot take the place of the jury. Like considerations govern review of administrative orders. If an order is valid only as a determination of policy or judgment which the agency alone is authorized to make and which it has not made, a judicial judgment cannot be made to do service for an administrative judgment." *Securities and Exchange Commission* v. *Chenery Corporation*, 318 U. S. 80, 88.

The jurisdiction of a reviewing court under the Agricultural Adjustment Act of 1938 is similar to the jurisdiction of a reviewing court under the Federal Power Act, and it has been held under the Federal Power Act that the power to "affirm, modify, or set aside" an administrative order does not confer on the court "power to exercise an essentially administrative function." *Federal Power Commission* v. *Idaho Power Co.*, 344 U. S. 17, 21. The "function of the reviewing court ends when an error of law is laid bare. At that point the matter once more goes to the Commission for reconsideration." *Id.* at 20. See also *Federal Trade Commission* v. *Carter Products*, 346 U. S. 327; *Federal Trade Commission* v. *Morton Salt Co.*, 334 U. S. 37, 54-55; *Federal Security Adm'r.* v. *Quaker Oats Co.*, 318 U. S. 218, 227-228; *Federal Communications Comm'n* v. *Broadcasting Co.*, 309 U.S. 134, 144-146; *Ford Motor Co.* v. *Labor Board*, 305 U. S. 364, 373-376; *Federal Radio Comm'n* v. *Nelson Bros. Co.*, 289 U. S. 266, 276-278.

The alleged conflict (Pet. 7, 9) with *Smith Land Company v. Christensen*, 148 F. 2d 184 (C. A. 10), is nonexistent. In the *Smith Land Company* case, the court remanded the proceeding to the review committee to hear newly discovered evidence, and the court affirmed the subsequent administrative determination based on the additional evidence (148 F. 2d at 185-186). Hence the court in that case did not attempt to usurp the administrative function. Also in *Fulford* v. *Forman*, 245 F. 2d 145 (C. A. 5), *Daffin* v. *Pope*, 170 F. 2d 622 (C. A. 5), and *C. G.*

Conn, Limited v. *National Labor Relations Board*, 108 F. 2d 390 (C. A. 7), upon which petitioner relies (Pet. 7, 10), no issue was presented as to the procedure to be followed where, as here, additional evidence was presented upon the reopening of an administrative proceeding and procedural irregularity invalidated the administrative determination thereupon made.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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MAY 1958.

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